

Response to Amendment

The following office action is in response to the amendment filed on September 8, 2008. Claims 1-10 are pending in the application. Claims 1-10 are rejected as set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gidley 5,204,172 in view of Sudaglass Fiber Technology (www.sudaglass.com/fabrics.html) and Wilson 5,502,937.

2. In re claim 1, with reference to Figure 1, Gidley '172 discloses a fire resistant flexible wall comprising:

- A first surface (13,top) designed to be presented to a fire area.
- A second surface (13, bottom) on the opposite side from the first surface.
- A flexible insulating material layer (10) of knitted glass fabric between a first fiber fabric layer (12,top) and the second surface (13, bottom).

Gidley '172 fails to disclose:

- A basalt fiber fabric layer.
- The flexible insulating material selected from the group consisting of mineral wool, glass wool and rock wool.

3. Sudaglass however discloses that basalt fiber fabrics are suitable for fire-resistant needs. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention to modify the fire resistant wall of Gidley '172 to use a basalt fiber fabric instead of a glass fiber fabric since Sudaglass teaches that it was known in the art to use basalt fiber for its fire resistant properties.

4. Wilson '937 discloses that it is known to use mineral wool fibers or glass fibers as an insulative layer (28) in a fire resistant element (column 3, lines 30-36). Therefore one having ordinary skill in the art at the time the invention was made would have known to substitute mineral wool for the knitted glass fabric since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Mineral wool would provide different fire resistant properties than the knitted glass.

5. In re claims 2, 6-8 and 10, the fire resistant flexible wall of Gidley/Sudaglass discloses:

- A second fiber fabric layer (12, bottom) between the insulation material and the first surface.
- The basalt fiber fabric is made of yarn, tapes, strips or filaments of basalt. (Sudaglass, line 1)
- Incorporating a flexible continuous metal layer (11).
- The fiber fabric layer (12) and continuous metal layer (11) are joined by means of an adhesive. (Gidley '172, column 1 lines 59-61)

- Wherein the continuous metal layer (11) incorporates a metal or an alloy of metals selected from aluminum, titanium or stainless steel. (Gidley, column 2, lines 39-41)

6. In re claims 3 and 4, the examiner takes Official Notice that it is well known in the art to use stitching as a means to join two fabrics together.

7. In re claim 5, it would further be obvious to make the stitching of claims 3 and 4 to be made of basalt yarn, since Sudaglass teaches it is known in the art to use basalt for its fire resistant properties.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gidley 5,204,172 in view of Sudaglass Fiber Technology (www.sudaglass.com/fabrics.html) as applied above and further in view of Smith United States Patent number 5766745.

9. In re claim 9, the fire resistant flexible wall of Gidley/Sudaglass has been discussed above but fails to disclose:

- The adhesive is sodium silicate based.

10. Smith et al '745 discloses:

- The adhesive is sodium silicate based. (column 4, lines 54-56)

11. It would have been obvious to one having ordinary skill in the art to use a sodium silicate based adhesive as taught by Smith et al '745 since it is known for its fire resistant properties and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Response to Arguments

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments that Smith teaches away from using glass wool, the examiner would like to note that the reference of Smith was not used to teach the use of glass wool as in insulation. It was used to teach the application of a sodium silicate based adhesive in a fire resistant application. The examiner has made no attempts to use the teaching of Smith in regards to glass wool insulation, as argued by the applicant.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEREMY C. RAMSEY whose telephone number is (571)270-3133. The examiner can normally be reached on Monday-Friday 6:30 am-4:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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